



6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 03-123; FCC 14-125]

Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Waiver of iTRS Mandatory Minimum Standards

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission issues a Further Notice of Proposed Rulemaking (FNPRM) seeking comment on amending the definition of Telecommunications Relay Services (TRS) in the Commission's rules to conform to changes made to this definition by the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA), which allows compensation for TRS calls between two or more individuals with disabilities. The Commission also seeks comment on eliminating as a mandatory minimum standard the requirement that TRS providers provide voice-carry-over to voice-carry-over (VCO-to-VCO) and hearing-carry-over to hearing-carry-over (HCO-to-HCO), subject to exceptions for Captioned Telephone Service (CTS) and Internet Protocol Captioned Telephone Service (IP CTS), as HCO-to HCO and VCO-to-VCO calls would not require a communications assistant (CA) to provide functionally equivalent communication. These proposals are made to ensure that the intent of Congress in enacting the CVAA is implemented and that the mandatory minimum standards imposed for TRS are applicable and appropriate for each type of TRS to which they are applied.

DATES: Comments are due on or before **[30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, and reply comments on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments, identified by CG Docket No. 03-123, by any of the following methods:

Electronic Filers: Comments may be filed electronically using the Internet by accessing the Commission's Electronic Comment Filing System (ECFS), through the Commission's Web site <http://fjallfoss.fcc.gov/ecfs2/>. Filers should follow the instructions provided on the Web site for submitting comments. For ECFS filers, in completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and **CG Docket No. 03-123**.

- Paper filers: Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW-A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial Mail sent by overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.
- In addition, parties must serve one copy of each pleading with the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, or via email to fcc@bcpiweb.com.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: Eliot Greenwald, Consumer and Governmental Affairs Bureau, Disability Rights Office, at (202) 418-2235 or e-mail Eliot.Greenwald@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Waiver of iTRS Mandatory Minimum Standards, Further Notice of Proposed Rulemaking (FNPRM), document FCC 14-125, adopted on August 20, 2014, and released on August 22, 2014, in CG Docket No. 03-123. In document FCC 14-125, the Commission also adopted an accompanying Report and Order and Order, which are summarized in a separate Federal Register Publication. The full text of document FCC 14-125 will be available for public inspection and copying via ECFS, and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. It also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone: (800) 378-3160, fax: (202) 488-5563, or Internet: www.bcpweb.com. Document FCC 14-125 can also be downloaded in Word or Portable Document Format (PDF) at:

<http://www.fcc.gov/encyclopedia/disability-rights-office-headlines>. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant

page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with rule § 1.1206(b). In proceedings governed by rule § 1.49(f) of the Commission's rules or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

INITIAL PAPERWORK REDUCTION ACT OF 1995 ANALYSIS

Document FCC 14-125 does not contain proposed information collection requirements subject to the Paperwork Reduction Act (PRA) of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

SYNOPSIS

1. Telecommunications Relay Services. Title IV of the Americans with Disabilities Act of 1990 (ADA) requires the Commission to ensure that TRS is available to enable a person with a hearing or speech disability to communicate with other telephone users in a manner that is functionally equivalent to voice communications service to the extent possible and in the most efficient manner. In accordance with this directive, the Commission's rules contain functional requirements, operations procedures and mandatory minimum standards to ensure the provision of functionally equivalent relay service. See 47 CFR 64.604. Many of these standards were adopted in the 1990s, at a time when there was only one form of TRS transmitted over the public switched telephone network (PSTN) – TTY-to-voice relay service. A text telephone, or TTY, is a text device that employs graphic communication in the transmission of coded signals through a wire or radio communication system. In a TTY-to-voice relay call, a communications

assistant (CA) relays the call between parties by converting everything that the text caller with a hearing or speech disability types into voice for the hearing party and typing everything that the voice user responds back to the person with a disability. From 2000 to 2007, in light of advancing communication technologies and Internet-based innovations, the Commission recognized other forms of TRS as eligible for compensation from the Interstate Telecommunications Relay Service Fund (TRS Fund or Fund), including three forms of Internet-based TRS (iTRS): Video Relay Service (VRS), Internet Protocol Relay Service (IP Relay), and Internet Protocol Captioned Telephone Service (IP CTS). Today iTRS account for more than 90% of the total relay service minutes reimbursed from the Fund.

2. In this document, the Commission seeks comment on a proposed amendment to the definition of TRS contained in the Commission's rules, to conform to changes made to this definition in the CVAA, which allows compensation for TRS calls between two or more individuals with disabilities. The proposed amendment would allow such calls, including those whose handling may require more than one CA. The Commission's mandatory minimum standards are intended to ensure that the user experience when making TRS calls is comparable to a voice user's experience when making conventional telephone calls. The Commission also seeks comment on eliminating the mandatory minimum standard requiring TRS providers to provide HCO-to-HCO and VCO-to-VCO. With VCO, a deaf or hard of hearing person who is able to speak communicates by voice directly to the other party to the call without intervention by the CA, and the CA relays the other party's voice response as text or in sign language. See generally 47 CFR 64.601(a)(42) (defining VCO in the context of TTY-based relay service). With HCO, a person who has a speech disability, but who is able to hear, listens directly to the other party's voice without intervention by the CA, and in reply has the CA convert his or her typed or signed responses into voice See generally 47 CFR 64.601(a)(13) (defining HCO in the context of TTY-based relay service).

3. Proposed amendment to the definition of TRS. As originally drafted, section 225 of the Communications Act of 1934 (Act), defined TRS as a telecommunication service between a person with a hearing or speech disability and a "hearing" individual. This definition, adopted when there was only one

type of relay service (TTY-to-voice), generally did not allow compensation for calls between and among two or more persons with a disability when no hearing person was a party to the call.

4. Section 103(a)(3) of the CVAA amended section 225 of the Act to make clear that TRS are intended to enable people who are deaf, hard of hearing, deaf-blind, or who have a speech disability to communicate by telephone (wire or radio) with any individual, removing the specification that such individual be hearing. Specifically, the new definition states:

The term “telecommunications relay services” means telephone transmission services that provide the ability for an individual who is deaf, hard of hearing, deaf-blind, or who has a speech disability to engage in communication by wire or radio with one or more individuals, in a manner that is functionally equivalent to the ability of a hearing individual who does not have a speech disability to communicate using voice communication services by wire or radio.

47 U.S.C. 225(a)(3).

5. Congressional guidance on the amended definition recognizes that there are many different forms of relay services and that there may be times when two or more individuals using different types of TRS may need to communicate with each other, even when a hearing person is not a party to the call. Specifically, the Senate and House Reports on the CVAA explain that in addition to defining TRS as the ability of a person who is deaf, hard of hearing, deaf-blind or has a speech disability to use TRS to communicate with hearing individuals, these services may be used where individuals with disabilities need to communicate with other relay users with disabilities, where necessary to achieve functionally equivalent communication. This will be the case, for example, when two or more individuals to a call each have disabilities, but use different types of relay services, depending on their communication needs. In order for communication between or among such individuals to be achieved, more than one type of relay service may be needed to complete the call.

6. In accordance with the CVAA and its legislative history, the Commission proposes to amend the definition of TRS in the Commission’s rules at 47 CFR 64.601(a)(32) to conform to the

definition adopted in the CVAA. Additionally, in accordance with the revised definition, the Commission tentatively concludes that the proposed new rule will allow compensation from the TRS Fund for relay calls involving two or more persons using different forms of relay services, including calls whose handling may require more than one CA. The Commission seeks comment on these proposals.

7. With the exception of CTS and IP CTS, the Commission emphasizes that the proposed changes, if adopted, will not permit compensation from the TRS Fund for relay calls involving two or more persons using the same type of relay service, which in effect would be a form of point-to-point communications. In other words, although multiple CA calls may be necessary to facilitate TRS communication between and among individuals using different forms of TRS, compensation is not appropriate for TRS calls in which a CA is not needed to relay service between users. The exceptions to this prohibition are calls between two CTS or two IP CTS users, or a CTS user to IP CTS user, because each CTS user currently must communicate through his or her own CA, who re-voices what the other party says to that user.

8. HCO-to-HCO and VCO-to-VCO. The Commission's rules currently require all TRS providers to provide VCO-to-VCO and HCO-to-HCO. The Commission believes that it should not have minimum standards mandating the provision of HCO-to-HCO and VCO-to-VCO calls by TRS providers. Specifically, under the Commission's rules, in order for two individuals to use VCO or HCO on the same call, both people to the call would have to be able to speak and hear what the other party is saying. This means that a CA would not be necessary to provide functionally equivalent communication during either type of call. The exceptions to this are when a CTS or IP CTS user calls another CTS or IP CTS user, which is essentially a way of completing an enhanced VCO-to-VCO call, and for which the use of multiple CAs has been permitted (though not mandated) by the Commission for compensation because of its specific function. Accordingly, the Commission proposes to amend § 64.604(a)(3)(v) of its rules to remove as a mandatory minimum standard the requirement that TRS providers provide VCO-to-VCO and HCO-to-HCO, subject to the exceptions for CTS and IP CTS. The Commission seeks comment on this proposal.

INITIAL REGULATORY FLEXIBILITY ANALYSIS

9. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in document FCC 14-125. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments in document FCC 14-125. The Commission will send a copy of document FCC 14-125, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

10. In document FCC 14-125, the Commission initiates a further review relating to TRS in response to section 103(a)(3) of the CVAA, which amended the definition of TRS in section 225(a)(3) of the Act. The objective of this proceeding is to amend the Commission's rule defining TRS to conform to the statutory definition of TRS. The Commission also seeks comment on whether, under the revised definition of TRS, providers may be compensated from the TRS Fund for communication among TRS users using multiple forms of TRS.

11. Document FCC 14-125 seeks comment on (1) whether the Commission should revise the definition of TRS found in § 64.601 of its rules to conform to the amended definition of TRS included in section 225 of the Act; (2) the compensability of calls between two or more individuals with disabilities using TRS, even when a hearing person is not on the call; (3) the compensability of TRS calls that require multiple CAs to provide functionally equivalent communication; and (4) whether the Commission should amend § 64.604(a)(3)(v) of the Commission's rules to remove the mandatory minimum standard requiring TRS providers to provide VCO-to-VCO and HCO-to-HCO.

12. Legal Basis. The authority for this proposed rulemaking is contained in sections 1, 4(i), 4(j), and 225 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), and 225.

13. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business,"

“small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

14. TRS Providers. These services can be included within the broad economic categories of Wireless Telecommunications Carriers and All Other Telecommunications. Nine providers currently receive compensation from the TRS Fund for providing VRS, IP Relay, IP CTS and CTS: ASL Services Holdings, LLC (ASL Services) (VRS); AT&T Inc. (AT&T) (CTS); CSDVRS, LLC (CSDVRS) (VRS); Convo Communications, LLC (Convo) (VRS); Hamilton Relay, Inc. (Hamilton) (IP CTS and CTS); Hancock, Jahn, Lee and Puckett, LLC d/b/a “Communications Access Ability Group” (CAAG) (VRS); Kansas Relay Service, Inc. (Kansas Relay) (CTS); Purple Communications, Inc. (Purple) (VRS, IP Relay and IP CTS); Sorenson Communications, Inc. (Sorenson) (VRS and IP CTS); and Sprint Corporation (Sprint) (IP Relay, IP CTS and CTS).

15. Wireless Telecommunications Carriers. Wireless Telecommunications Carriers is defined as follows: “This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular phone services, paging services, wireless Internet access, and wireless video services.” In analyzing whether a substantial number of small entities would be affected by the requirements proposed in document FCC 14-125, the Commission notes that the SBA has developed the small business size standard for Wireless Telecommunications Carriers, which consists of all such firms having 1,500 or fewer employees. TRS providers AT&T and Sprint can be included within the broad economic census category of Wireless Telecommunications Carriers. Under this category and the associated small business size standard, AT&T and Sprint cannot be considered small.

16. All Other Telecommunications. All Other Telecommunications is defined as follows: “This U.S. industry comprises establishments primarily engaged in providing specialized

telecommunications services Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.” In analyzing whether a substantial number of small entities would be affected by the requirements proposed in document FCC 14-125, the Commission notes that the SBA has developed a small business size standard for All Other Telecommunications, which consists of all such firms with gross annual receipts of \$30 million or less. TRS providers ASL Services, CSDVRS, Convo, Hamilton, CAAG, Kansas Relay, Purple, and Sorenson can be included within the broad economic census category of All Other Telecommunications. Under this category and the associated small business size standard, approximately half of these eight providers can be considered small.

17. Certain rule changes proposed in document FCC 14-125, if adopted by the Commission, would modify rules or add requirements governing reporting, recordkeeping, and other compliance obligations.

18. If the Commission were to revise the definition of TRS found in § 64.601 of its rules to conform to the amended definition of TRS included in section 225 of the Act, such a rule may impose new compliance obligations on TRS providers. If the Commission were to conclude that the revised definition of TRS allowed for compensation from the TRS Fund of calls between two or more individuals with disabilities using TRS, even when a hearing person is not on the call and even when TRS calls require multiple CAs to provide functionally equivalent communication, the Commission notes that all providers potentially affected by the proposed rules, including those deemed to be small entities under the SBA’s standard, would benefit because they would be eligible for compensation for additional types of TRS calls. If the Commission were to revise § 64.604(a)(3)(v) of its rules to remove the mandatory minimum standard requiring TRS providers to provide VCO-to-VCO and HCO-to-HCO, the Commission notes that all providers potentially affected by the proposed rule, including those deemed to be small entities under the SBA’s standard, would benefit because they would no longer be required to provide VCO-to-VCO and HCO-to-HCO.

19. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

20. If the Commission were to revise the definition of TRS found in § 64.601 of its rules to conform to the amended definition of TRS included in section 225 of the Act and conclude that the revised definition of TRS allowed for compensation from the TRS Fund of calls between two or more individuals with disabilities using TRS, even when a hearing person is not on the call and even when TRS calls require multiple CAs to provide functionally equivalent communication, such regulations may impose new compliance obligations on TRS providers. However, allowing providers to be compensated for additional types of TRS calls may benefit certain small entities by increasing the types of TRS calls for which they may seek compensation. In determining whether to revise the definition of TRS in § 64.601 of the Commission's rules and the compensability of additional types of calls, the Commission will consider the costs and benefits of such a revision while keeping in mind the statutory requirements. Additionally, if the Commission were to amend § 64.604(a)(3)(v) of its rules to remove the mandatory minimum standard requiring TRS providers to provide VCO-to-VCO and HCO-to-HCO, such regulations would remove current compliance obligations and would not impose new compliance obligations on TRS providers.

21. Federal Rules Which Duplicate, Overlap, or Conflict With, the Commission's Proposals.
None.

ORDERING CLAUSES

Pursuant to sections 1, 4(i), 4(j), and 225 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), and 225, document FCC 14-125 IS ADOPTED.

The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of document FCC 14-125 including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Individuals with disabilities, Telecommunications.

FEDERAL COMMUNICATIONS COMMISSION.

Marlene H. Dortch,
Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 64 as follows:

Part 64 – MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 254(k); 403(b)(2)(B), (c), Pub. L. 104-104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 227, 228, 254(k), 616, 620, and the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, unless otherwise noted.

2. Amend § 64.601 by revising paragraph (a)(32) to read as follows:

§ 64.601 Definitions and provisions of general applicability.

(a) ***

(32) Telecommunications relay services (TRS). Telephone transmission services that provide the ability for an individual who is deaf, hard of hearing, deaf-blind, or who has a speech disability to engage in communication by wire or radio with one or more individuals, in a manner that is functionally equivalent to the ability of a hearing individual who does not have a speech disability to communicate using voice communication services by wire or radio.

3. Amend § 64.604 by revising paragraph (a)(3)(v) to read as follows:

§ 64.604 Mandatory minimum standards.

* * * * *

(a) ***

(3) ***

(v) TRS providers are required to provide the following types of TRS calls:

(A) Text-to-voice and voice-to-text;

(B) One-line VCO, two-line VCO, and VCO-to-TTY; and

(C) One-line HCO, two-line HCO, and HCO-to-TTY. VRS providers are not required to provide text-to-voice and voice-to-text functionality. IP Relay providers are not required to provide one-line VCO and one-line HCO. IP Relay providers and VRS providers are not required to provide VCO-to-TTY and HCO-to-TTY. Captioned telephone service providers and IP CTS providers are not required to provide:

(1) Text-to-voice functionality; and

(2) One-line HCO, two-line HCO, and HCO-to-TTY. IP CTS providers are not required to provide one-line VCO.

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